



OFFICE OF POLICE ACCOUNTABILITY

DIRECTOR: Jesus Jara

CASE REVIEW

OPO21-0041

OIA21-0358

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THE SITUATION – Fall of 2021

In late October of 2021, during the afternoon, a subject in their 20's entered the Boise Towne Center Mall carrying a backpack armed with several loaded firearms. While inside the mall, the subject shot and killed a uniformed mall security officer and a mall customer. The subject also shot at other innocent people inside the mall before eventually exiting the mall, fleeing west on foot through the parking lot.

Boise Police Officers (herein referred to as BPD) were dispatched to the Boise Towne Center Mall regarding reports received of an active shooter. During BPD's response to the scene, dispatch advised the responding officers that individuals had been shot inside the mall and provided officers with a physical description of the shooter. BPD officers #1 and #2 were riding together in a patrol vehicle. They were first to arrive along the north side (rear) of the Dave & Busters (a short distance west of the mall) where they observed a subject carrying a backpack fitting the description given earlier.

In a solo patrol vehicle, BPD Officer #3 entered the parking lot behind Officers #1 and #2. Officer #3 stopped along the left side of a landscaped median north of the Dave & Busters and south of Mod Pizza. Officers #1 and #2 stopped on the right side of the landscaped median in the same area as they prepared to confront the subject carrying a backpack walking on foot away from their patrol car. BPD Officer #2 was holding their patrol rifle as they exited the patrol vehicle from the passenger side. As they got out of the vehicle, they observed the subject reach into their backpack and pull out a handgun. The subject pointed the gun in their direction, and Officer #2, realizing they did not have a live round chambered in the patrol rifle, felt that they were going to be shot. Being unable to immediately engage the subject due to an unchambered round of ammunition, Officer #2 quickly sought cover by rapidly moving to the rear of the patrol vehicle and then to the rear of the patrol vehicle driven by Officer #3, where they could chamber a round and have the protection of the patrol vehicle. BPD Officer #1 also observed the subject pulling a weapon from their backpack, and as Officer #1 drew their weapon, they felt a concussive blast against the windshield and thought that they had been shot. The subject rapidly fired their weapon at the officers approximately 16 times.

Officer #1 exited the patrol vehicle and fired their weapon once at the subject; however, they was unable to continue firing as the ammunition magazine became separated from the weapon. After the subject

fired at the officers, the subject turned and began to run away. Officer #1, knowing that they could not fire their weapon, feared the subject might escape and likely shoot more people. Hence, they attempted to strike the subject with their patrol vehicle by accelerating rapidly toward the subject. The subject was able to jump behind a large trash dumpster that was in the alley a few feet from the rear of Dave & Busters and avoid being hit by the patrol vehicle. The subject, still concealed behind the dumpster, shot themselves in the head, causing a catastrophic head injury. Officer #1 stopped the patrol vehicle adjacent to the dumpster on the opposite side and was still unable to see the subject who was behind the dumpster. Officer #1 loaded a new magazine into their weapon and remained by their driver's door, where they could observe the subject if the subject moved from behind the dumpster. Officer #1 felt they might have been struck by one of the rounds fired by the subject as their face was bleeding around the eye.

Officers #2 (with their patrol rifle deployed) and #3, hearing the multiple gunshots ran toward Officer #1. Officer #3 quickly assessed their condition. Officer #3 could see that Officer #1 had a visible injury to their face that was bleeding, but it was unknown if Officer #1 had any additional injuries at that time. Officer #3 removed Officer #1's Body Worn Camera, turned it on, and attached it to their uniform as they did not have one. Officer #3 walked Officer #1 away from the immediate area and to a safer location, where they physically checked Officer #1 for additional injuries and administered first aid. Officer #2 was by the dumpster watching for the subject. They maintained their position until additional officers arrived and determined that the subject had shot themselves in the head, causing a massive head injury. Officer #3 returned to the subject's location and performed life-saving efforts to stop their bleeding until the arrival of paramedics who transported the subject to the hospital. The subject later succumbed to their injuries at the hospital. Officer #1 was also transported to the hospital for treatment of their injuries. The officer survived their injuries.

A mall customer fled in their vehicle from the west parking lot of the mall when they were told by people running that there was a shooter inside the mall. The customer left the parking lot turning North on Milwaukee and headed toward Emerald. As they were stopped in their vehicle on Milwaukee just south of Emerald, a bullet fragment from one of the shots the subject fired at the officers went through their passenger window and struck them, causing injury. They remained by their vehicle after being injured, and responding officers/paramedics rendered first aid and transported them to the hospital. They recovered from the injuries.

REASON FOR THE REVIEW

Boise City Code defines the authority and duties of the Office of Police Accountability (OPA). It grants the Office the authority to investigate and evaluate the performance of Officers whenever certain criteria are met.

INVESTIGATION OF CRITICAL INCIDENTS

If a BPD Officer or employee is involved in a critical incident, defined below, as a principal, victim, witness or custodial Officer, BPD shall immediately notify the Office of Police Accountability. The Director may provide on-scene monitoring of critical incidents and may act as a real-time observer to any criminal, administrative, or civil investigation conducted by or on behalf of BPD (e.g., the Critical Incident Task Force). The Director shall be given full access to observe interviews or any other aspects of the investigation. If the Director believes additional investigation is necessary, the Director



may employ an outside investigator who will perform investigatory functions at the discretion of the Director. Critical incidents include:

- 1. Use of deadly force (excluding animals).*
- 2. Use of force or any other police or law enforcement action that results in the death of one or more persons, or serious bodily injury requiring hospital admission.*
- 3. Vehicle pursuits, roadblocks, or intercepts resulting in the death or serious bodily injury requiring hospital admission.*
- 4. Vehicular collisions resulting in death or serious bodily injury requiring hospital admission that occurred while a police Officer or police employee was operating a city vehicle (either on-duty or off-duty) or a private vehicle while on-duty.*

FOCUS OF THE INVESTIGATION

This investigation had, as its primary focus, the deadly force used by officers and the related sections of the BPD Policy and Procedures Manual (herein referred to as PM) in force at the time of this incident.

PM § 1.001 Use of Force / Authorization
PM § 1.003 Use of Firearms in the Line-of Duty
PM § 17.020 Audio / Video Recordings

THE INVESTIGATION

The Office of Police Accountability opened an independent administrative investigation. The following steps were taken during the review.

1. Review of BPD records including reports, statements, audio, video, and photographs.
2. Review of available body-cam footage from officers #1, #2 and #3
3. Review of Ada County dispatch records, reports and Coroner's report.
4. BPD Internal Affairs (herein after referred to as IA) investigative documents including statements, records, audio, reports, photographs, and diagrams.
5. Critical Incident Task Force (herein after referred to as CITF) investigations including reports, statements, medical records, photos, records, and audio.
6. OPA Investigator participation in the interview of officers #1, #2 and #3 with IA.

WHAT THE INVESTIGATION FOUND

Based on the preponderance of the evidence obtained and reviewed during this investigation, I issued the following findings of fact:

- At about 1350 hours, BPD Officers #1, #2, #3, and numerous other officers responded to the Boise Towne Square Mall in response to a report of an active shooter.
- BPD Officers #1, #2, and #3 were the first to observe and have contact with the subject, who was later determined to be the shooter west of the mall adjacent to the Dave & Buster's business.



- Officers #1 and #2 were riding together and stopped their patrol vehicle behind the subject who was on foot.
- Officer #3 was driving solo in a patrol vehicle and stopped their vehicle adjacent to Officer #1's vehicle on the other side of a landscaped median on the north side of Dave & Busters.
- As the subject observed the patrol vehicle behind them, they pulled out a weapon from their backpack and began firing multiple shots at Officers.
- Officer #2 exited the vehicle's passenger side and quickly moved to the rear, where they could chamber a round into the rifle.
- Officer #1 drew their weapon from a seated position in the driver's seat and felt a concussive blast from the windshield.
- Officer #1 stepped out of the vehicle and fired one shot at the suspect.
- After firing one shot, Officer #1 could not fire additional rounds as their ammunition magazine was dislodged from their weapon.
- The subject continued firing at officers, approximately 16 shots.
- After firing shots at officers, the subject turned and began running away, still holding their weapon.
- Officer #1, fearing the subject may escape and shoot more people, accelerated the patrol vehicle in an attempt to strike the subject to incapacitate them and stop the threat to the public.
- The subject was able to run behind a trash dumpster before being struck by the patrol vehicle.
- The subject shot themselves in the head, causing a catastrophic head injury that was ultimately fatal.
- Officer #1 stopped the patrol vehicle adjacent to the trash dumpster where the subject was last seen.
- Officer #1 loaded a new ammunition magazine into their weapon and maintained their position of cover by the patrol vehicle.
- Officer #3 activated and removed the body-worn camera of Officer #1 and attached it to their uniform because they did not have one.
- When they activated Officer #1's camera, the recording began retroactively for 30 seconds, capturing some of Officer #1's earlier actions.
- They assisted Officer #1 away from the area where the subject was last seen and assessed them for additional injuries.
- Officer #2 took up a position behind the patrol vehicle by the dumpster with is patrol rifle deployed.
- Officer #3 returned to the area of the dumpster along with additional responding officers who determined the suspect had shot themselves in the head.
- Officer #3 began life-saving efforts on the subject to stop their bleeding until they could be transported to the hospital.
- The subject was transported by paramedics to the hospital and later succumbed to their injuries.
- One of the shots fired by the subject at Officer #1 struck the lower portion of the windshield and continued in an upward path through the windshield, hitting the underside of the BPD baseball cap brim worn by Officer #1.
- A bullet fragment also struck the eyelid of Officer #1, causing injury.
- A mall customer fled from the parking lot in their vehicle, heading north on Milwaukee. While stopped in the vehicle on Milwaukee just south of Emerald, a bullet fragment fired by the subject at the officers passed through their passenger window and struck them causing injuries which they survived.
- Officer #1 was wearing a Body Worn Camera but failed to activate it before he arrived at the scene.



- Officer #3 was conducting a follow-up investigation at another location when this call was dispatched, and at that time, they had forgotten to check out a camera as they usually do.
- Officer #3 realized they did not have the camera while responding to the mall but did not take additional time to obtain one in order to expedite his arrival at the active shooter call.

DIRECTOR'S ANALYSIS

Pursuant to **PM § 1.003** BPD policy permits an officer to use deadly force in defense of his life or the life of another when he or she, "reasonably believes that imminent danger of death or serious bodily injury exists" (PM § 1.003).

Pursuant to **PM § 1.001** The decision to use force "should be based on the facts and circumstances of each particular case, including the severity of the crime, whether the subject poses an immediate threat to the safety of the officer or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight." The facts and totality of the circumstances demonstrated imminent danger to Officer #1, Officer #2, Officer #3, and anyone else in the area. Officer #1 reasonably believed that it was necessary to use deadly force to prevent imminent danger of death or serious bodily harm to them and the other officers present, as well as anyone else who may have been hit by gunfire. The investigation revealed the courageous and decisive actions taken by BPD Officers #1, #2, and #3 ultimately stopped the continuing deadly threat to the public posed by the subject firing their weapon.

DIRECTOR'S CONCLUSIONS

A finding of **EXONERATED** has been issued with respect to Officer #1 use of deadly force in the matter in question. Exonerated is defined as a specific act or omission of the police officer or police employee that was justified, lawful, and proper.

A finding of **SUSTAINED** has been issued with respect to Officer #1 for failing to activate their department-issued body-worn camera before their arrival (PM 17.020 Audio / Video Recordings). This finding represents a technical violation of policy.

A finding of **SUSTAINED** has been issued with respect to Officer #3 for failing to wear and activate their department-issued body-worn camera before his arrival (PM 17.020 Audio / Video Recordings). This finding represents a technical violation of policy. However, Officer #3's actions were prudent in expediting their arrival at the scene and preserving evidence by deliberately activating Officer #1's camera and attaching it to their uniform to memorialize actions taken during this critical time.

The Director also finds that the BPD, IA and the CITF investigations were thorough, objective, and complete. Finally, the Director finds no need to conduct any additional investigations of this incident.

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